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August 28, 2008

Robin Kelly  
Federal Election Commission  
Senior Campaign Finance Analyst  
999 E Street, NW  
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Dear Ms. Kelly,

This letter is in response to your Request For Additional Information, dated July 29, 2008, regarding the submission on May 23, 2008, of a certain Form 9 disclosure by National Taxpayers Union. You ask that the National Taxpayers Union "clarify the circumstances regarding the untimely disclosure of the electioneering communication in question."

After consulting with counsel after the broadcast has aired, National Taxpayers Union filed the Form 9 disclosure that is the subject of the Request For Additional Information out of an abundance of caution. National Taxpayers Union did not then, and does not now, believe it was legally required to file a Form 9 for broadcast communications referencing Senator Johnson within 30 days of South Dakota's June 3 primary election.

National Taxpayers Union purchased air time to broadcast a radio communication titled "South Dakotans Know" from May 9 through May 16, 2008. This communication referenced Senator Tim Johnson.

South Dakota held its primary election on June 3, 2008. Senator Johnson ran unopposed, and in fact, did not appear on the primary election ballot. See <http://apps.sd.gov/applications/ST25CERS/results/resultsSW.aspx?type=sw>. Given this fact, National Taxpayers Union does not believe that it was required to file Form 9, as there was no "election" with respect to Senator Johnson on June 3.

Under FEC regulations, a "primary election" is "an election which is held prior to a general election, as a direct result of which candidates are nominated, *in accordance with applicable State law*, for election to Federal office in a subsequent election." 11 C.F.R. § 100.2(c)(1) (emphasis added).